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How Moving from “Best” to “Next” Practices Can Fuel Innovation

by Sandee Magliozi

“When one door closes, another opens; but we often look so long and so regretfully upon the closed door that we do not see the one which has opened for us.”

— Alexander Graham Bell

Once insulated, law has become one of the most competitive markets in the new normal. The legal world has and is changing, driven by technology, deregulation (legal work being done by non-lawyers as well as lawyers), globalization, and the demand for increased efficiency in delivery of legal services. The impact of all of this change has been widespread, profound, and not limited to law firms. Both law firms and law schools are feeling the competitive pressure.

Richard Susskind writes in *Tomorrow’s Lawyers: An Introduction to Your Future* (Oxford University Press, 2013) that legal institutions and lawyers are positioned to change more radically in the next two decades than they have in the last two centuries. Additionally, in an article entitled [“What Will Lawyers Be Doing in 5 to 10 Years?”](#) (*ABA Journal*, May 18, 2015), Victor Li quotes F. Daniel Siciliano, a professor at Stanford Law School, as saying, “In 15 years, two-thirds of lawyers won’t practice law, at least not the way they practice now.”

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Yet we have a habit of doing as we always have. We resist change, and if we do change it is slowly, around the edges, and without a great deal of flexibility or agility. What law practice and legal education traditionally consider big change is often passé and can be years behind similar concepts in other industries. Change is hard in the legal world, and yet change we

must. Innovation is even harder. We need a new way forward. I suggest shifting our focus to developing “next practices.”

“Best Practices” vs. “Next Practices”

Traditionally, when we think about what our law students and lawyers will need to do to meet the demands of future practice, we look to best practices. But best practices are past driven. While once successful, some of our best practices may have become obsolete — as hard as it is for us to believe that. Best practices do have value, but they can also be limiting and keep us grounded in the past. The changes taking place in the legal field today require a future focus and have put pressure on organizations to create work environments that foster collaboration and innovation. “Next practices” are future-driven, strategic solutions that enable us to better anticipate and respond to change. They are not about making something more efficient or better, but about fundamental transformation and the development of new models and ways of doing things, as Dr. John Sullivan points out in [“Seeking Out ‘Next Practices,’ the Next Generation of Best Practices”](#) (ERE Media, June 26, 2006).

The new normal of the legal industry is crying out for us to break new ground in legal practice, legal education, and the development of 21st century lawyers.

Best practices look backward, providing advice that worked in the past. Next practices focus on what to do in the time ahead.

Best practices may keep you out of trouble, but they rarely break new ground. The new normal of the legal industry is crying out for us to break new ground in legal practice, legal education, and the development of 21st century lawyers.

“Next Practices”

A focus on next practices helps move us past the status quo and fuels innovation. We need to develop the competencies our students and lawyers will need to anticipate and respond to an increasingly rapidly changing legal landscape. I am not talking about the ever-widening skill set our students and lawyers will need to do their work, but the skills they and we will need to reimagine our work, to innovate, and to create next practices. Our ability to innovate and add value is critical to the future success of both law schools and law firms.

Next practices are ideas, innovations, concepts, and solutions that move beyond the status quo.

The term “next practices” is meant to convey the notion of genuinely new approaches rooted in practical understanding. C.K. Prahalad — the late business thought leader, Professor of Business Administration at the University of Michigan, and author of *The Fortune at the Bottom of the Pyramid* — coined the term to describe business practices that generate innovation and transformation by seizing opportunity. Next practices are ideas, innovations, concepts, and solutions that move beyond the status quo. They shift value and allow us to create something completely different to address emerging needs. In higher education, an example of an innovation that may become a next practice is competency-based education. It turns the traditional model on its head. Instead of awarding credits based on how much time students spend learning, this model awards credits based on whether students can prove they have mastered competencies. In legal practice, alternative legal services providers are another example of innovation. Their emergence is based on the fact that they have developed a service delivery model different from the law firm model.

“Organizations become winners by spotting opportunities and inventing next practices,” reports Adi Ignatius in an article entitled “C.K. Prahalad” in the *Harvard Business Review* (April 2010). “Next practices are all about innovation: imaging what the future will look like and identifying the opportunities that will arise, and building the capabilities to capitalize on them.”

Next Practice Competencies

Before we can truly shift to a next practices mindset, we first have to develop and strengthen innovation competencies. Many will be familiar with the ever-expanding list of competencies that law firms and now law schools have identified as core to their success. We need to add innovation competencies, which can include:

- Creativity (thinking outside the box, generating original and novel ideas, coming up with new approaches)
- Problem solving (identifying the nature and cause of problems, seizing opportunities, and originating actions that ensure solutions aligned with strategic direction)
- Collaboration (working with others and seeking opinions to reach a creative solution, engaging and sustaining mutually beneficial relationships and alliances with stakeholders)
- Resilience (bouncing back from setbacks quickly, accepting criticism, and maintaining self-control and an optimistic outlook)
- Adaptability (changing methods of approach when necessary to achieve a goal, responding to change with a positive attitude and a willingness to learn new ways to accomplish objectives)
- Forecasting (recognizing important changes, evaluating long-term impact, and evaluating future directions and risks based on strengths, weaknesses, opportunities, and threats)
- Managing change (understanding what promotes and

inhibits an idea for change, willingness to challenge the status quo when it impedes performance, taking intelligent risks, encouraging creative initiatives and innovative solutions)

With these innovation competencies in place we can not only respond to change but drive change through innovation. In short, our law students and lawyers need to be able to analyze and solve problems, collaborate, persevere, take calculated risks, and learn from failure. This is a process. Innovation at its heart is a process. We need a model that will support the process and that will support transforming our innovative ideas into next practices through that process.

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Next Practice Innovation Model

We talk about being more strategic and about being innovative, but we often are not willing to do anything differently from anyone else. In [‘Next Practice’ in Education: A Disciplined Approach to Innovation](#) (Innovation Unit, February 2007), Valerie Hannon quotes Professor Prahalad as saying, “Next practice by definition has three problems: firstly it is future-oriented; secondly, no single institution or company is an exemplar of everything that you think will happen; and thirdly, next practice is about amplifying weak signals, connecting the dots. Next practice is disciplined imagination.”

Do we too often focus on what others are doing? Do we think something sounds like a good concept but ask, “Where is the data that backs that up?” Innovation is not yet supported by data. Next practices are developed in advance of hard evidence, and they entail us taking some risk — which means accepting some failure. Failure is a necessary part of the innovation process because from failure comes learning. The goal is to look

past what everyone else is doing now, connect the dots, and innovate for the future.

But before we can develop next practices, we need a model that encourages and stimulates innovation in our law firms and law schools. The model needs to stimulate ideas for successful next practice pilots and allow us to incubate successful ideas with supportive leadership, strategic relationships, and alliances. As Valerie Hannon notes in [‘Next Practice’ in Education: A Disciplined Approach to Innovation](#), the model also needs to allow us to put ideas into action with the flexibility and agility to test them and allow them to fail if they will — so we can quickly access and learn from our failures — and then finally needs to allow us to take our successes and accelerate their value by implementing them more widely as next practices.

Innovation and Next Practices in Professional Development

Law schools and law firms are experimenting with new ideas and programs in how they teach and develop their students and lawyers. More and more innovative initiatives emerge daily, but more are needed. Many schools are supplementing and changing their curriculum; one example is Michigan State’s ReInvent Law Laboratory, which “focuses on human capital that better supports the current and future trend of the legal job market.”

Law schools are also looking beyond their ivory towers and inviting collaboration with legal practitioners, as well as reaching out to a diverse array of community partners from nonprofit organizations to corporations. The University of Pittsburgh’s Innovation Practice Institute and Colorado Law’s Tech Lawyer Accelerator Program are just a couple of examples. Law schools are even collaborating with each other, such as through the Consortium for Innovative Legal Education (CILE), which is a cooperative model for legal education consisting of four independent law schools working together. The Bay Area Legal Incubator is another example where five schools — of which my school, Santa Clara Law, is one — are working together with a local bar association to support their graduates in launching solo practices that will serve

modest means clients.

Law firms are adapting their training programs by helping their associates understand their clients’ businesses through business-minded programs and by engaging client insiders to teach associates directly. Firms are breaking away from standardized prescheduled programs to offer brief, targeted learning opportunities, and they are developing their attorneys’ breadth in addition to their depth while providing more real-time feedback.

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While all of these efforts are promising and address current needs, we have yet to find the crucial “next practice” that will carry us into the future. Who will develop the next Fenwick Flex or ReInvent Law Laboratory?

Conclusion

We need to focus on innovation and develop the associated competencies. We then need to shift our mindset from “best” to “next” practices. Finally, we need to implement a model that supports the transformation of an innovative idea becoming a next practice so that we can see and walk through the open door referred to in the Alexander Graham Bell quote at the beginning of this article (and in the opening of Susskind’s *Tomorrow’s Lawyers*). Next!

About the Author



Sandee Magliozi is the Associate Dean for Experiential Learning and a Clinical Professor of Law at Santa Clara University School of Law. Before joining the law school, she was a Senior Manager of Attorney Training and Development at Holland & Knight LLP and a firm-wide Professional Development Manager for Heller Ehrman LLP. Sandee is a contributing author to *The Art and Science of Strategic Talent Management in Law Firms* (West, September 2010).